diction." This may be admitted; but Mr. Justice Gray and the dissenting judges seem to be right in showing that this is not conclusive. All that can be meant by the remark quoted, if it is a true summary of the authorities, is that the owner of a private vessel is not exempt from liability because she was engaged at the moment of her wrongdoing in the useful occupation of putting out fires and the like. *The Blackwall*, 10 Wall. 1; *The Clarita and The Clara*, 23 Wall. 1. These decisions do not touch the question of the rule of *respondeat superior* in regard to governmental agents of municipal corporations. Why should not that rule be applied in admiralty? The personal liability of the owner of an offending vessel, based upon his ownership, is not different from the responsibility under the rule of agency based upon the relation of master and servant. This is admitted by Mr. Justice White. If, then, the court of admiralty is enforcing the general law of agency, it is not easy to see how that court can consent to apply part of that law and yet refuse to apply the whole of it. The fire-boat personified was the servant of the city as well as were the firemen; the liability of the city for their negligence should not vary according as the plaintiff chose a court of common law or a court of admiralty.

One other point should not pass unnoticed. In the last paragraph of the majority opinion the court carefully guards itself from admitting the general rule of common law which exempts a city from responsibility for the torts of its fire department. In the courts of the states, however, from Massachusetts to Washington, *Hafford* v. *New Bedford*, 16 Gray, 297; *Lawson* v. *Seattle*, 6 Wash. 184, this rule is fixed, if there is anything fixed in the law of municipal corporations. The doubt suggested by the court must be deemed unfortunate because of the unsettling effect which it must have upon actions brought in the federal courts. It also raises a grave question whether this matter is not one of local law, in which the law of the respective states should be followed by the federal courts. If it is not, the circuit judges are left in an unenviable position.

RIPARIAN RIGHTS UNDER THE FIFTH AMENDMENT. — A question of considerable importance as to the rights of those who own land abutting on navigable waters has lately been passed upon by the Supreme Court of the United States. *Scranton* v. *Wheeler*, 21 Sup. Ct. Rep. 48. The federal government, for the sole purpose of facilitating navigation in the St. Mary's River, built a pier in the submerged land of the river parallel to the shore and opposite the riparian property of the plaintiff. This pier virtually destroyed all means of access from the river to the plaintiff's riparian land, for between the pier and the shore there was left a waterway only five feet in depth. The plaintiff claimed the right to land his freight upon this government pier, and upon being refused brought an action of ejectment; the question therefore arose as to whether the destruction of the means of access from the plaintiff's land to navigable water was such a taking of private property for public use without just compensation as was forbidden by the Fifth Amendment. The court held that the riparian owner's private right of access must give place to the right of the government to improve the navigation of public waters, and thus that there was not any taking of private property for public use, but only a consequential injury to a right which must be enjoyed in subjection to the rights of the public. The dissenting opinion was based on

the contention that this and other riparian rights were to be determined by state law, and thus, if by the rule in the particular state where the plaintiff's land was situated this right of access was considered to be property, compensation was requisite, the power of Congress to make provision for interstate commerce being subject to the Fifth Amendment.

In the state courts there is a hopeless conflict on the question whether this right of access is property or not. Lewis, Eminent Domain, 2d ed. § 77 *et seq.* And in general the cases do not seem to turn on the ownership of the bed of the stream, as might at first be supposed. The majority in the principal case appears to have considered themselves bound by the case of *Gibson* v. *United States*, 166 U. S. 269, where it was held that the destruction of the means of access to the Ohio River during seven out of every twelve months by a submerged dike put up to improve navigation was not protected by the Fifth Amendment. Indeed this decision would seem to conclude the present case. To the contention of the minority that the determination whether this is a "taking of property" should be left to the state courts, the obvious reply is that this is essentially a federal question — whether an improvement to navigation which is authorized by the "Commerce Clause" and which impairs the value of the adjoining land is such a "taking of property" as was contemplated by the Fifth Amendment. Besides, most of the cases relied on by the minority in this regard are those where the federal court considered itself bound by state adjudications upon the question whether the abutter or the public owned the fee of a navigable river. *Shively* v. *Bowlby*, 152 U. S. 1. Such a rule in considering questions of the law of property is quite a different matter from saying that a state's interpretation of a clause in its own constitution shall be conclusive upon the Supreme Court in interpreting a similar clause in the Federal Constitution. And considering the question upon those broad principles which should govern in constitutional questions, it may well be said that a riparian owner holds his property subject to the implied condition in regard to his ownership that the sovereign may make improvements in facilitating navigation even though the abutter suffers thereby a consequential injury.

Secret Antenuptial Conveyances. — In both England and America, it has long been recognized that a secret antenuptial conveyance, without consideration, by a wife is a fraud on her intended husband's marital rights, and may be set aside in equity. In England this doctrine has never been extended to cover such conveyances by the husband, but this is largely due to the fact that the custom of jointure which prevails there to a great extent has rendered dower a comparatively unimportant right. In the United States, however, where this system is not generally adopted, courts have usually set aside such conveyances by the husband. *Chandler* v. *Hollingsworth*, 3 Del. Ch. 99. A recent decision by the Ohio court is in line with the prevailing view. A widower with three sons, just before a second marriage, and without the knowledge of his intended wife, made a gratuitous conveyance of a portion of his land to his sons. It was held that his widow was nevertheless entitled to dower in the land conveyed. *Ward* v. *Ward*, 57 N. E. Rep. 1095.

The true principle underlying this doctrine has only recently been pointed out. In early times, the courts rested it upon deceit and disap-